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IN THE
COURT OF APPEALS OF INDIANA

ANTHONY DIX,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 29A02-0808-CR-706
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable William J. Hughes, Judge
Cause No. 29D03-0610-FA-448

October 31, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Anthony Dix appeals his conviction for Possession of Cocaine,[1] a class C felony. Dix argues that the trial court erroneously refused to grant a mistrial after a witness began to offer hearsay evidence and that there is insufficient evidence supporting the conviction. Finding no error, we affirm.

FACTS

In October 2006, April Mullinax needed money to pay her rent, so she contacted William Garnett, for whom she had sold cocaine in the past. Garnett set Mullinax up with "Johnny," who contacted Mullinax on October 5, 2006, and stated that he wanted to buy some cocaine. "Johnny" was actually Carmel Police Detective Robert Locke, who was working undercover for the Hamilton/Boone Drug Task Force.

On October 9, 2006, Dix, an acquaintance of Mullinax, arrived at her residence driving a rust-colored vehicle. He carried a pair of tennis shoes from which he pulled an object that he told Mullinax was one-half of an ounce of crack cocaine. Dix accompanied Mullinax in her mother's van to sell the drugs to "Johnny" because Dix did not trust her. When Mullinax arrived at the agreed-upon location, she exited the van, leaving Dix in the front passenger's seat, and entered Detective Locke's vehicle, which was parked right next to the van. She brought the tennis shoes into Detective Locke's vehicle, pulled out the crack cocaine, and sold it to the detective for $500. The police immediately arrested Mullinax and Dix.

Mullinax quickly offered to cooperate with the police and informed them that she had obtained the drugs from Dix. Mullinax subsequently pleaded guilty to class C felony

[1] Ind. Code § 35-48-4-6.

possession of cocaine and agreed to testify truthfully against Dix in Dix's case in exchange for the State dismissing a charge of class A felony dealing in cocaine.

On October 10, 2006, the State charged Dix with class A felony dealing in cocaine and class C felony possession of cocaine. At Dix's jury trial, which began on March 4, 2008, Mullinax testified that he had given her the crack cocaine. Additionally, a detective testified about the ownership of a vehicle found at Mullinax's house after her arrest. When his testimony began to veer into hearsay territory, the trial court cut him off, cleared the courtroom, discussed the issue with the attorneys, told the detective that he was not permitted to testify on the issue any further, and eventually admonished the jury to disregard any allegedly improper testimony. Dix requested a mistrial, which the trial court denied. On March 5, 2008, the jury found Dix guilty of class C felony possession of cocaine and not guilty of class A felony dealing in cocaine. On April 4, 2008, the trial court sentenced Dix to five years imprisonment, with two years suspended to probation. Dix now appeals.

DISCUSSION AND DECISION

I. Mistrial

Dix first argues that the trial court should have granted his motion for a mistrial. Initially, we note that Dix did not object to the detective's testimony on which he based his mistrial motion. Consequently, he has waived this argument. See Frentz v. State, 875 N.E.2d 453, 466 (Ind. Ct. App. 2007), trans. denied (holding that the failure to raise a timely and specific objection at trial to the testimony complained of on appeal waives any argument that the trial court erred by denying the defendant's motion for a mistrial).

Waiver notwithstanding, we observe that whether to grant a mistrial is a decision that is within the trial court's discretion. Hampton v. State, 873 N.E.2d 1074, 1078 (Ind. Ct. App. 2007). We afford the trial court's determination great deference on appeal because the trial court is in the best position to gauge the surrounding circumstances of an event and its effect on the jury. Kyles v. State, 888 N.E.2d 809, 813 (Ind. Ct. App. 2008). Therefore, we will reverse the trial court only when it abused its discretion. Boney v. State, 880 N.E.2d 279, 291 (Ind. Ct. App. 2008), trans. denied.

In considering whether a mistrial was warranted, we must determine whether the improper testimony placed the defendant in a position of grave peril to which he should not have been subjected. Warren v. State, 757 N.E.2d 995, 998 (Ind. 2001). The gravity of the defendant's peril is judged by the probable persuasive effect of the improper testimony on the jury. Id. at 999. It is well established that a timely and accurate admonishment is presumed to cure any error in the improper testimony. Beer v. State, 885 N.E.2d 33, 48 (Ind. Ct. App. 2008).

Here, Detective Sean Patrick Brady testified about the ownership of a vehicle found at Mullinax's residence following her arrest. When asked whether he had determined to whom the vehicle was registered, the following discussion took place:

> Q. Okay, [was the license plate] ever run to determine who it was registered to, yes or no.
>
> A. Yes sir.
>
> Q. If yes, who ran those plates?
>
> A. Basically I ran them and the way I run it is I call—

> Q. Thank you. And where is the document that proves ownership of the rust[-]colored car in [Mullinax's] driveway?
>
> A. What I did is I wrote down what my dispatcher told me—
>
> Q. Sir, where is the document, that proves this.
>
> A. I have handwritten notes what they told me over the phone.
>
> Q. You don't have a document, correct?
>
> A. I have a written document that I created what they told me.

Tr. p. 235. At that point, the trial court dismissed the jury and asked the State if it had an official document proving the ownership of the vehicle. The State responded that it did not. The court then asked Detective Brady if he had a document, and the detective replied, "I have what I wrote down sir." Id. at 238. Subsequently, the trial court asked whether the detective had a certified copy from the BMV, and he replied that he did not. The court noted that Detective Brady had testified that he had this document and "waved" a document for the jury to see. Id. at 239. Dix requested a mistrial but the trial court denied the request. When the jury was reconvened the next day, the trial court provided the following admonishment:

> . . . Members of the jury when we recessed last evening there was an objection pending.[2] I have sustained the objection on the basis that the witness was testifying to hearsay matters. I have told you . . . that this process is a highly controlled process and that the rules must be followed to insure [the] integrity of the process. Hearsay evidence is not competent evidence and may not be considered by the jury in a criminal case on the question of guilty or not guilty. For this reason Detective Brady's last answers have been stricken. And you may not consider that information in reaching a verdict in this case. In addition, during the last answer, Detective Brady pulled

[2] A thorough review of the transcript reveals that, in fact, no objection was made to Detective Brady's testimony. Instead, the trial court sua sponte ended his testimony and dismissed the jury.

> from a file a piece of paper in the view of this jury. That piece of paper is not a document that proves ownership of the, quote, rust, end quote, colored car. There is no document in evidence in this case which proves ownership. The paper which was displayed was a paper on which Detective Brady made certain handwritten notes. These notes are based on hearsay and are not competent evidence for consideration by this jury. Because that paper is based on hearsay, you may not consider it in any manner in reaching a verdict in this case. And you may not speculate as to what that paper may have been or what the notes thereon may have said. To do otherwise, would compromise the integrity of this process. . . .

Id. at 249-50.

Initially, we note that Detective Brady never once connected the vehicle to Dix. Dix's name was not even mentioned during the curtailed discussion. Thus, we cannot see how Dix was harmed in any way. That said, even if there had been something objectionable in the detective's testimony, the trial court's lengthy and emphatic admonishment certainly cured the problem. We see no reason to depart from the presumption that the admonishment cured any alleged errors. Thus, we find that the trial court did not abuse its discretion by denying Dix's motion for a mistrial.

II. Sufficiency of the Evidence

Next, Dix argues that the evidence is insufficient to support his conviction. In reviewing such a challenge, we neither reweigh the evidence nor assess witness credibility. Allen v. State, 875 N.E.2d 783, 785 (Ind. Ct. App. 2007). Instead, we will consider only the evidence and the reasonable inferences that may be drawn therefrom that support the verdict and will affirm if probative evidence exists based on which a jury could find the defendant guilty beyond a reasonable doubt. Gray v. State, 871 N.E.2d 408, 416 (Ind. Ct. App. 2007), trans. denied. A conviction will generally be upheld on

appeal where it is supported by the uncorroborated testimony of a single witness. Gregory v. State, 885 N.E.2d 697, 704 (Ind. Ct. App. 2008).

To convict Dix of class C felony possession of cocaine, the State was required to prove beyond a reasonable doubt that he knowingly or intentionally possessed three or more grams of cocaine. I.C. § 35-48-4-6(b)(1). Dix argues that the evidence is insufficient to establish that he knowingly or intentionally possessed the cocaine. At trial, however, Mullinax testified that Dix brought the cocaine to her and identified it as such as he handed it to her. Tr. p. 180. This testimony is sufficient to establish that Dix knowingly, intentionally, and actually—as opposed to constructively—possessed the cocaine.

Dix's arguments to the contrary amount to a request that we reweigh the evidence and reassess Mullinax's credibility, a practice in which we do not engage when evaluating the sufficiency of the evidence supporting a conviction. We note that the jury was aware of Mullinax's reasons for testifying, including her plea agreement and the fact that she avoided prison time by entering into that plea agreement, her prior drug history, and her prior acquaintance with Dix. It was for the jury to weigh this information. The jurors found Mullinax to be a credible witness, and we will not second-guess that determination. Thus, we find the evidence sufficient to support Dix's conviction for class C felony possession of cocaine.

The judgment of the trial court is affirmed.

MATHIAS, J., and BROWN, J., concur.